

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

JOE HOWARD MCCLAIN,)	
)	
Plaintiff,)	
)	
v.)	No. 2:20-cv-00105-JPH-DLP
)	
MELODEE SUE DICKERSON,)	
DENNIS ALEXANDER,)	
HERMAN F. BUSSE Judge,)	
JUDY PYNE Detective,)	
BECK Prosecutor,)	
)	
Defendants.)	

ORDER DISMISSING CASE

On May 21, 2020, the Court dismissed Mr. McClain's complaint and ordered Mr. McClain to file an amended complaint or otherwise show cause why his complaint should not be dismissed. Dkt. 6. Mr. McClain filed several documents—a response to the Court's Order, dkt. 7, an amended complaint, dkt. 8, a "submission of written conversion statements," dkt. 9, a submission of statement and documents, dkt. 10, and a submission of reply in support of motion to dismiss, dkt. 11.

Mr. McClain asserts that he raised a malicious prosecution claim and alleged that "[o]n July 8, 1977, [he] was acquitted by Allen Superior Court on all charges of rape." Dkt. 8 at 3. But Mr. McClain's malicious prosecution claim is time barred. *Commercial Credit Corp. v. Ensley*, 264 N.E.2d 80, 85 (Ind. Ct. App. 1970) ("there is a two-year statute of limitations which applies to actions for malicious prosecution in Indiana"); *see also* Ind. Code § 34-11-2-4

(providing that an action for injury to a person must be brought within two years after the cause of action accrues). Under Indiana law, "the cause of action of a tort claim accrues and the statute of limitations begins to run when the plaintiff knew or, in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of the tortious act of another." *Filip v. Block*, 879 N.E.2d 1076, 1082 (Ind. 2008) (quotation omitted). Because Mr. McClain was acquitted of those charges on July 18, 1977 and filed this complaint on February 21, 2020, Mr. McClain's malicious prosecution claim is time barred.

The other submitted documents do not address the identified deficiencies, dkt. 6. Mr. McClain has failed to show why this action should not be dismissed. Therefore, the claims against Ms. Dickerson, Mr. Alexander, Judge Busse, and Prosecutor Beck are **dismissed without prejudice**. See dkt. 6. The claims against Detective Pyne are **dismissed with prejudice**. Final judgment will issue by separate entry.

SO ORDERED.

Date: 8/25/2020

Distribution:

JOE HOWARD MCCLAIN
14421
WABASH VALLEY - CF
WABASH VALLEY CORRECTIONAL FACILITY - Inmate Mail/Parcels
6908 S. Old US Hwy 41
P.O. Box 1111
CARLISLE, IN 47838



James Patrick Hanlon
United States District Judge
Southern District of Indiana